

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

United States of America,  
  
Plaintiff/respondent  
  
v.  
  
Robert Cortez Marshall,  
  
Defendant/petitioner

Case No.: 2:19-cr-00270-JAD-BNW-1

**Order Denying Motion for Extension of  
Time, Granting Motion to Amend Petition,  
Directing Response, and Setting Briefing  
Schedule**

[ECF Nos. 197, 200]

Defendant Robert Cortez Marshall pled guilty to wire fraud and was sentenced to 34 months in prison followed by two years of supervised release. He filed a 28 U.S.C. § 2255 motion, arguing that his sentence should be vacated or reduced.<sup>1</sup> He concurrently filed a motion to extend time to file his “§ 2255 Brief” by 90 days “due to the complexity of his six claims; the limited access to [the] law library . . . at Nevada Southern Detention Center; and [because] he is in the process of retaining a federal post-conviction lawyer . . . .”<sup>2</sup>

The Rules Governing § 2255 Proceedings do not permit a petitioner to file a separate brief in addition to his § 2255 motion. That initial motion must instead “specify all the grounds for relief available to the moving party . . . [,] state the facts supporting each ground . . . [, and] state the relief requested.”<sup>3</sup> Marshall has timely filed his § 2255 motion, and he doesn’t say what additions or amendments he may wish to make at some later date. So I deny his motion to extend his deadline to file a § 2255 “brief.” If Marshall later wishes to amend or supplement his

<sup>1</sup> ECF No. 198.

<sup>2</sup> ECF No. 197.

<sup>3</sup> Rule 2, Rules Governing § 2255 Proceedings for the United States District Courts.

1 § 2255 motion, he must file an appropriate motion seeking that relief and identifying the legal  
2 justification for it.

3 Marshall further moves to amend his § 2255 motion to correct some minor mistakes in  
4 his initial one.<sup>4</sup> Marshall filed that motion and his proposed amended petition the day his  
5 deadline to file a habeas petition expired,<sup>5</sup> and even had it been late I find that his minor  
6 amendments relate back to his timely filed petition.<sup>6</sup> Federal Rule of Civil Procedure 15  
7 provides that courts “should freely give leave when justice so requires.”<sup>7</sup> I find that Marshall’s  
8 proposed amendment satisfies that standard, so I grant his motion to amend. I further conclude  
9 that a response to Marshall’s amended petition appears warranted, so I order the United States of  
10 America to file a response by March 10, 2025.

### 11 Conclusion

12 IT IS THEREFORE ORDERED that Robert Cortez Marshall’s motion to extend time  
13 **[ECF No. 197] is DENIED** and his motion for leave to amend **[ECF No. 200] is GRANTED**.  
14 The Clerk of Court is directed to **DETACH and FILE** the amended motion to vacate, set aside,  
15 or correct sentence under § 2255 **[ECF No. 200-1]**.

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17 <sup>4</sup> ECF No. 200.

18 <sup>5</sup> See ECF No. 178 (judgment, entered on November 7, 2023). Marshall did not appeal his  
19 judgment, so his one-year deadline to file a § 2255 motion began to run on November 21, 2023,  
20 the date when his ability to file a direct appeal expired. See 28 U.S.C. § 2255(f) (establishing a  
21 one-year period of limitation that runs from “the date on which the judgment of conviction  
22 becomes final”); *United States v. Gilbert*, 807 F.3d 1197, 1199 (9th Cir. 2015) (stating that, “if  
the [§ 2255] movant does not pursue a direct appeal to the Court of Appeals, the conviction  
becomes final when the time for filing a direct appeal expires”); Fed. R. App. P. 4(b)(1)(A)  
(setting a 14-day deadline for a criminal defendant to file a notice of appeal). Marshall filed his  
motion to amend on November 21, 2024. ECF No. 200.

23 <sup>6</sup> See Fed. R. Civ. P. 15(c); *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (applying FRCP 15(c) to  
habeas petitions).

<sup>7</sup> Fed. R. Civ. P. 15(a)(2).

1 IT IS FURTHER ORDERED that the **government must file a response to Marshall's**  
2 **amended § 2255 motion by March 10, 2025.** Marshall will have 21 days from service of the  
3 response to file a reply.

4 Dated: February 7, 2025

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6 U.S. District Judge Jennifer A. Dorsey  
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